



UNITED STATES PATENT AND TRADEMARK OFFICE

Commissioner for Patents
United States Patent and Trademark Office
P.O. Box 1450
Alexandria, VA 22313-1450
www.uspto.gov

26 FEB 2007

Mueting, Raasch & Gebhardt, P.A.
P.O. Box 581415
Minneapolis, MN 55458

In re Application of
GUO et al.
Application No. 10/539,241
PCT No.: PCT/US03/39950
Int. Filing Date: 16 December 2003
Priority Date: 16 December 2002
Attorney Docket No.: 290.0004 0130
For: pRNA CHIMERA

DECISION ON PETITION
UNDER 37 CFR 1.181

This decision is issued in response to applicant's "Petition to Withdraw Holding of Abandonment" under 37 CFR 1.181 filed in the United States Patent and Trademark Office (PTO) on 25 August 2006. No petition fee is required.

BACKGROUND

On 16 December 2003, applicant filed international application no. PCT/US03/39950 which claimed a priority date of 16 December 2002. Pursuant to 37 CFR 1.495, the thirty-month period for paying the basic national fee in the United States expired at midnight on 16 June 2005.

On 16 June 2005, applicant filed a transmittal letter for entry into the national stage in the United States which was accompanied by, inter alia, the basic national fee; a copy of the international application; and a preliminary amendment.

On 19 December 2005, the United States Designated/Elected Office mailed a Notification of Missing Requirements under 35 U.S.C. 371 (Form PCT/DO/EO/905) indicating that an oath or declaration in compliance with 37 CFR 1.497(a) and (b) must be filed. The notification set a two-month time limit in which to respond.

On 14 August 2006, the United States Designated/Elected Office (DO/EO/US) mailed a Notification of Abandonment indicating that the application was abandoned for failure to respond to the Notification of Missing Requirements mailed 19 December 2005.

On 25 August 2006, applicants filed the petition considered herein. The petition requests withdrawal of the holding of abandonment, stating that a response to the Notification Of Missing Requirements was timely filed via facsimile on 13 February 2006.

DISCUSSION

Applicant states in their present petition that an oath/declaration was received at the United States Patent and Trademark Office on 13 February 2006. A review of the application file reveals that the declaration originally filed 13 February 2006 is located therein, therefore, the Notification of Abandonment (PCT/EO/909) was mailed in error.

However, the declaration submitted on 13 February 2006 is not in an acceptable form. Specifically, there is an issue as to whether the declaration has been properly executed. The declaration filed with petition includes duplicate sheets of page 3 of 4. It is unclear if the inventors were presented with only page 3 of 4, in which case the execution would be improper, or if they were presented with a complete declaration for signing, but counsel subsequently compiled the declaration into the single document, which is improper. (See MPEP 201.03(B) on how to correct this matter.)

CONCLUSION

Applicant's petition to withdraw the holding of abandonment is GRANTED. In view of the receipt of the declaration and power of attorney filed 13 February 2006, the Notification of Abandonment dated 19 December 2005 was mailed in error and is hereby VACATED.

This application is being forwarded to the United States Designated/Elected Office (US/DO/EO) for continued processing including the issuance of a Notification of Defective Response (Form PCT/DO/EO/916) indicating that an oath or declaration is required. No extension of time will be allowed under 37 CFR 1.136.

Any further correspondence with respect to this matter deposited with the United States Postal Service should be addressed to the Mail Stop PCT, Commissioner for Patents, Office of PCT Legal Administration, P.O. Box 1450, Alexandria, Virginia 22313-1450, with the contents of the letter marked to the attention of the Office of PCT Legal Administration.



Anthony Smith
Attorney-Advisor
Office of PCT Legal Administration
Telephone: 571-272-3298
Fax: 571-273-0459